

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 95-1208-C - ORDER NO. 96-127 ✓
FEBRUARY 22, 1996

IN RE: Application of DeltaCom, Inc., D/B/A DeltaCom) ORDER
Long Distance Services for a Certificate) APPROVING
of Public Convenience and Necessity to) CERTIFICATE
Provide Intrastate Resold Telecommunications) AND
Service the State of South Carolina.) GRANTING
) MOTION

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of DeltaCom, Inc., D/B/A DeltaCom Long Distance Services ("DeltaCom" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of intrastate interexchange telecommunications services, including prepaid calling card services, in the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann §58-9-280 (Supp. 1994) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed DeltaCom to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of DeltaCom's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. DeltaCom complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the Consumer Advocate for the State of South

Carolina (the "Consumer Advocate"). Subsequently, the Consumer Advocate notified the Commission that it was satisfied that the Company's filing was consistent with prior dockets, and, therefore, the Consumer Advocate would not participate in the scheduled hearing.

A hearing was commenced on February 7, 1996, at 11:00 a.m., in the Commission's Hearing Room. The Honorable Rudolph Mitchell, Chairman, presided. DeltaCom was represented by Frank R. Ellerbe, III, Esquire. Catherine D. Taylor, Staff Counsel, represented the Commission Staff.

Foster O. McDonald, President of DeltaCom, appeared and offered testimony in support of DeltaCom's Application. Mr. McDonald stated that DeltaCom is an Alabama corporation which is registered to do business in South Carolina as a foreign corporation. According to Mr. McDonald, DeltaCom proposes to offer long distance services using resold transmission services of carriers certificated to carry traffic in South Carolina. Mr. McDonald explained the Company's request for authority to provide interexchange telecommunications services in South Carolina as a reseller. He further explained the Company's services, operations and marketing procedures.

Mr. McDonald also offered that DeltaCom possesses the technical, financial and managerial abilities to provide its services in South Carolina. The record reveals that the company agreed to make certain changes to its proposed tariff to comply with Commission guidelines and prior Orders.

During cross-examination, Mr. McDonald stated that DeltaCom had provided previous intrastate service in South Carolina to one

of its customers, SouthTrust Bank. Mr. McDonald explained that SouthTrust Bank is a customer of DeltaCom in other states, and that bank employees had made incidental calls within South Carolina. He asserted that DeltaCom had not sought to provide intrastate service in South Carolina and did not market its services in South Carolina. In light of these facts, counsel for DeltaCom made a motion that the Commission consider the circumstances and, in this instance, waive the refund requirement for this service. Mr. Ellerbe further requested that, if the Commission did not grant the Motion, DeltaCom only be required to refund to the client the portion of the charges paid above the portion of fees which were paid to the underlying carrier.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. DeltaCom is incorporated under the laws of the state of Alabama and is licensed to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. DeltaCom operates as a non-facilities based reseller of interexchange services and wishes to provide its services in South Carolina.

3. DeltaCom has the experience, capability, and financial resources to provide the services as described in its Application.

4. DeltaCom has carried some incidental intrastate service in South Carolina prior to this date.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to DeltaCom to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for DeltaCom for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. DeltaCom shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. DeltaCom shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the

general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1995).

4. DeltaCom shall file its revised maximum tariff and an accompanying price list within thirty (30) days of the date of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. DeltaCom is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if they so desire.

7. DeltaCom shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If DeltaCom changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, DeltaCom shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

9. DeltaCom shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

10. The Commission grants DeltaCom's Motion and hereby waives the requirement that DeltaCom refund to its customer the fees charged for intrastate service provided in South Carolina prior to certification by this Commission.

11. With regard to DeltaCom's debit card, the Commission requires, as a condition of offering debit card services, the Company to post with the Commission a bond in the form of a Certificate of Deposit worth \$5,000 drawn in the name of the Public Service Commission of South Carolina or a surety bond in the amount of \$5,000. The Certificate of Deposit shall be drawn on federal or state chartered banks or savings and loan associations which maintain an office in this state and whose accounts are insured by either the FDIC or the Federal Savings and Loan Insurance Corporation. A surety bond shall be issued by a duly licensed bonding or insurance company authorized to do business in South Carolina. This condition may be reviewed in one year.

12. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME _____

FEI NO. _____

ADDRESS _____

CITY, STATE, ZIP CODE _____

PHONE NUMBER _____

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.
- * THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.
- * THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT
(SEE #3 ABOVE).

SIGNATURE _____

NAME (PLEASE TYPE OF PRINT) _____

TITLE _____